K & N KENANGA SDN. BHD.

v.

LATCHMAN DASS SHEWARAM

HIGH COURT MALAYA, KUALA LUMPUR
ZAKARIA YATIM J
[SUIT NO. C 1219 OF 1984]
28 JUNE 1986

CIVIL PROCEDURE: *Appeal against decision of Senior Assistant Registrar allowing plaintiff's application to enter final judgment against defendant - Technical point - Inordinate delay on plaintiff's part in filing the Order 14 application - Whether the summary judgment should be set aside.*

The defendant appealed against the decision of the Senior Assistant Registrar allowing the plaintiff's application to enter final judgment against him in the sum of RM32,436.60 together with interest and costs. At the hearing of the appeal, Counsel for the defendant argued on a technical point, namely there was inordinate delay on the part of the plaintiff in filing the O. 14 application. According to the Court file, the application was filed thirteen months after appearance was entered and twelve months after the defence was filed.

Counsel for the plaintiff, in the course of his submission, gave the reasons for the delay. He said that the defence was a bare denial and it was important for the plaintiff to trace all the contracting notes. The whole transactions spread over one year. The plaintiff dealt with thousands of documents daily. He then referred to the documents exhibited to the affidavit in support of the O. 14 application. He submitted that delay should not be paramount consideration as to deprive the plaintiff of judgment.

Held:

[1] After considering the explanation for the delay given by counsel for the plaintiff, the Court was unable to accept the reasons given by him. When the plaintiff issued the writ they should have been prepared with all the relevant documents. In fact, the defence did not raise any complicated issue and there was not even a counterclaim.

[2] There was clearly inordinate delay by the plaintiff when the O. 14 application was filed twelve months after the defence was delivered. The plaintiff had failed to give any acceptable explanation for the delay.

[Summary judgment entered against defendant set aside. Plaintiff to pay the costs of this appeal and of hearing before the Senior Assistant Registrar to the defendant.]

Cases referred to:

McLardy v. Slateum [1890] 24 QBD 504
Comptroller-General of Inland Revenue Malaysia v. Weng Lok Mining Co. Ltd. [1969] 2 MLJ 98
Societe Des Etains De Bayas Tudjuh v. Woh Heng Mining Kongsi [1978] 2 MLJ 267
Krishnamurthy Nagaratnam & Anor. v. The Malayan Finance Corporation [1986] CLJ (Rep) 170

Other source referred to:

Supreme Court Practice 1985, Vol. 1, p. 137

For the defendant/appellant - Abdul Hamid Said; M/s. Sri Ram Zulkifly & Kumar
For the plaintiff/respondent - Ong Chee Seng; M/s. Mah-Kok & Din

JUDGMENT

Zakaria Yatim J:

This is an appeal against the decision of the Senior Assistant Registrar allowing the plaintiff's application to enter final judgment against the defendant in the sum of RM32,436.60 together with interest and costs.

At the hearing of the appeal, Encik Abdul Hamid, Counsel for the defendant/appellant, argued on a technical point, namely there was inordinate delay on the part of the plaintiff in filing the O. 14 application. The defendant did not file an affidavit to raise this technical objection. According to Encik Hamid, no affidavit was necessary to raise the technical objection. Mr. Ong Chee Seng, Counsel for the plaintiff/respondent agreed that no such affidavit was necessary. See the *Supreme Court Practice* 1985, Vol. 1, p. 137.

According to the Court file, the writ was issued on 25 April 1984. The defendant entered appearance on 13 June 1984, and filed his defence on 16 July 1984. The application for summary judgment was filed on 19 July 1985. The application was filed thirteen months after appearance was entered and twelve months after the defence was filed.

In *McLardy v. Slateum* [1890] 24 QBD 504, the plaintiff applied for judgment under Order XIV about a month after the defence was delivered. The Master made an order giving the defendant leave to defend upon paying the whole amount into Court. On appeal, Field J set aside the Master's order on the ground that an application under O. XIV could not be made after delivery of defence. The plaintiff appealed. Pollock B, in delivering the judgment of the Court, allowed the appeal and ordered that the case be sent back to the Judge in Chambers to be heard on the merits. Pollock B said,

> ... the intention of O. XIV r. 1 was that the plaintiff should apply within a reasonable time after the appearance of the defendant .....Therefore our judgment upon this point of law and practice is that a plaintiff is not necessarily too late in making his application under Order XIV r. 1, because a defence has been delivered...If a plaintiff makes his application after the ordinary time, the onus is on him to show that the delay is justifiable...

I have read the judgment carefully and there is no mention in the judgment that the plaintiff has explained about the one month delay. I suppose that one month delay is a "reasonable time" and no explanation is needed.

McLardy's case was followed by Raja Azlan Shah J, as he then was, in *Comptroller-General of Inland Revenue Malaysia v. Weng Lok Mining Co. Ltd.* [1969] 2 MLJ 98, Abdoolcader J, as he then was, in *Societe Des Etains De Bayas Tudjuh v. Woh Heng Mining Kongsi* [1978] 2 MLJ 267, and recently, by the Supreme Court in *Krishnamurthy Nagaratnam & Anor. v. The Malayan Finance Corporation* [1986] CLJ (Rep) 170.

In the *Comptroller-General's* case, the O. 14 application was filed three months after the defence was filed. The learned Judge accepted the reasons given by the plaintiff regarding the delay and held that

> ... the delay of a lapse of three months in the circumstances of the case is not inordinate and does not warrant a dismissal of the application.

In the *Societe's* case the O. 14 application was filed four days after the defence was filed. The learned Judge said that the onus was cast on the plaintiff for showing why he did not apply sooner. He found that the plaintiff had not discharged this onus and indeed the

plaintiff's Counsel admitted this to be so. Despite the failure on the part of the plaintiff to explain the delay, the learned Judge proceeded to examine the defence on the merits. The delay in the *Societe's* case was probably within the "reasonable time" period.

In *Krishnamurthy's* case, Salleh Abas LP, in delivering the judgment of the Supreme Court said,

> In the second place the law as to the time when an application for an O. 14 judgment could be made is settled law. The application must be made after an appearance has been entered and it could be made either before or after the delivery of defence provided that where it was made after the delivery of the defence, the plaintiff must explain the delay. If this explanation was not accepted by the Court no O. 14 Judgment could be signed. This is the *ratio decidendi* in *McLardy v. Slateum.*

In *Krishnamurthy's* case the appellants entered their appearance on 10 and 4 April 1984 respectively. No defence, however, was filed by them. On 31 May 1984 the respondent took out an O. 14 application. There was a delay of almost two months after the dates of appearance. Salleh Abas LP said,

> we do not think that the delay in this case is such as to inhibit the Court from granting the respondent's application for an O. 14 judgment.

In the instant case no explanation for the delay was made in the affidavit in support of the O. 14 application. Mr. Ong Chee Seng, in the course of his submission at the hearing of this appeal, gave the reasons for the delay. According to him, the plaintiff had to relocate the documents. He said that the defence was a bare denial and it was important for the plaintiff to trace all the contracting notes. He added that the whole transactions spread over one year and all the documents were with the client, which is a stock broking firm. He said that the plaintiff dealt with thousands of documents daily. He then referred to the documents exhibited to the affidavit in support of the O. 14 application. He submitted that delay should not be paramount consideration as to deprive the plaintiff of judgment.

I have considered the explanation given by Mr. Ong Chee Seng and I am unable to accept the reasons given by him. When the plaintiff issued the writ they should have been prepared with all the relevant documents. The defence did not raise any complicated issue and there was not even a counterclaim.

In my judgment there was clearly inordinate delay by the plaintiff when the O. 14 application was filed twelve months after the defence was delivered. The plaintiff failed to give any acceptable explanation for the delay. I, therefore, set aside the summary judgment entered against the defendant on 25 October 1985. The plaintiff will pay the costs of this appeal and the costs of the hearing before the Senior Assistant Registrar to the defendant.

Also found at [1986] 2 CLJ 136